



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Forza Automotive Group Corporation FOR Forza Automotive Facility ID No. 3011704

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Forza Automotive Group Corporation, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Forza Automotive located at 435 Ferry Road in Fredericksburg, Stafford County, Virginia. The Facility's UST and/or UST system are owned by Yawer D & M Yawer, and operated by Forza Automotive Group Corporation, and the Facility is further identified by UST Facility ID# 3011704.
6. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.
7. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.
8. "Forza Automotive Group Corporation" means Forza Automotive Group Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Forza Automotive Group Corporation is a "person" who operates the Facility.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
13. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
15. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health

or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

16. “Regulations” means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
17. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
19. “Underground Storage Tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Yawer D & M Yawer (Duraidd Yawer) is the Owner of the Facility and the inoperational petroleum fuel (a regulated substance) underground storage tanks (UST) at the Facility. Forza Automotive Group Corporation is the Operator of the Facility.
2. Yawer D & M Yawer became the owner of these tanks on January 10, 2012, with the acquisition of the Facility. Current UST Registration paperwork (DEQ Water Form 7530-3, dated November 10, 2018) incorrectly lists “Forza Automotive Group Corp” (sic) as the UST owner.
3. On May 5, 2011, DEQ staff inspected the Facility to evaluate the operator’s (then Forza Automotive, Incorporated) compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three USTs at the Facility: 10,000 gallon gasoline UST, and two 6,000 gallon gasoline USTs, installed in 1991. The operator indicated that the three petroleum USTs were not in use, and had their fuel dispensers removed. There was no intention to bring them back into use. DEQ observed that the Facility’s USTs were not in use, but

had not been properly closed. DEQ provided detailed information on the owner's requirements to close the USTs or to bring them back into compliance. The following observations were documented by DEQ:

- a. The active UST system at the Facility was still registered to the previous owner.
 1. 9VAC25-580-70 requires any UST Owner who brings an UST into use after May 8, 1986 must submit an amended notification form (Form 7530-2) within 30 days of any changes or upgrades to the tank or piping systems.
 - b. Pressurized piping on the UST systems were equipped with an MLLD leak detector, however DEQ has not received documentation demonstrating whether annual testing had occurred.
 1. 9VAC25-580-160 & 170 require that automatic line leak detectors have annual tests conducted in accordance with the manufacturer's requirements.
 - c. DEQ was not given documentation to ensure the Facility met Financial Assurance Regulations.
 1. 9VAC25-590 requires that owners and operators of USTs maintain all financial assurance mechanisms used to demonstrate financial responsibility for an UST until after the tank has been properly closed or a change-in-service to an unregulated use has been completed, or after corrective-action and closure of a tank. These records shall be made available upon request.
 - d. DEQ was not given documentation that was requested to demonstrate the operator's compliance with the UST regulations.
 1. 9VAC25-580-120 requires Owners and Operators of UST systems to cooperate fully with inspections as well as requests for document submission.
 - e. DEQ reviewed records indicating three cathodically protected UST systems were currently in use, but had not been tested in the past three years.
 1. 9VAC25-580-90.2, 90.4, and 60.3 require UST systems be equipped with cathodic protection systems that are inspected for proper operation every three years, and that records of compliance be maintained and available upon request.
4. On September 25, 2012, DEQ staff again inspected the Facility. The tank operator again expressed interest in having the tanks closed. The following deficiencies from the September 25, 2012, inspection were documented by DEQ:
- f. DEQ has not received all documentation requested to demonstrate compliance with the UST regulations.
 1. 9VAC25-580-120 states Owners and Operators of UST systems must fully cooperate with inspections as well as requests for document submission.

- g. DEQ reviewed records indicating three cathodically protected UST systems were currently in use, but had not been tested in the past three years.
 - 1. 9VAC25-580-90.2, 90.4, and 60.3 require UST systems be equipped with cathodic protection systems that are inspected for proper operation every three years, and that records of compliance be maintained and available upon request.
 - h. A current list of designated Class A, Class B, and Class C operators was not provided to DEQ upon request.
 - 1. 9VAC25-580-125.B and F state that Owners and Operators of petroleum UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility, and shall prepare and maintain a current list of these operators.
5. DEQ performed a compliance inspection on September 4, 2015, and again noted these same deficiencies. An inspection on January 23, 2018, noted the tanks continued to exist in the same state, and were still disused. The Owner, again, stated their willingness to temporarily close the USTs, until permanent closure could be achieved.
6. DEQ staff sent Warning Letters (WL) and Notices of Violation (NOV) to the UST owner for the aforementioned violations as follows: WL No. WL-UST-12-06-NRO-01, issued June 14, 2012; NOV No. NOV-UST-13-04-NRO-001, issued April 12, 2013, and NOV No. TNRO229776, issued December 13, 2018.
7. Based on the results of the May 5, 2011, September 25, 2012, September 4, 2015, and January 23, 2018 inspections, the Board concludes that Forza Automotive Group Corporation has violated 9VAC25-580-50.3, 9VAC25-580-60.4, 9VAC25-580-70, 9VAC25-580-90.2, 9VAC25-580-120, 9VAC25-580-125.B, 9VAC25-580-160, 9VAC25-580-170, & 9VAC25-590, as described in paragraphs C(1) through C(4), above.
8. In order for Forza Automotive Group Corporation to return to compliance, DEQ staff and representatives of Forza Automotive Group Corporation have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Forza Automotive Group Corporation, and Forza Automotive Group Corporation agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Forza Automotive Group Corporation for good cause shown by Forza Automotive Group Corporation, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV's: No. NOV-UST-13-04-NRO-001 dated April 12, 2013, and NOV No. TNRO229776, issued December 13, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Forza Automotive Group Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Forza Automotive Group Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Forza Automotive Group Corporation declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Forza Automotive Group Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Forza Automotive Group Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Forza Automotive Group Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Forza Automotive Group Corporation shall notify the DEQ Regional Director verbally within 24 hours and in writing within three

business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Forza Automotive Group Corporation. Nevertheless, Forza Automotive Group Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Forza Automotive Group Corporation has completed all of the requirements of the Order;
 - b. Forza Automotive Group Corporation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Forza Automotive Group Corporation.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Forza Automotive Group Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Forza Automotive Group Corporation and approved by the Department pursuant to this Order are

incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Forza Automotive Group Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Forza Automotive Group Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Forza Automotive Group Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Forza Automotive Group Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Thomas Faha, Regional Director
Department of Environmental Quality

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Forza Automotive Group Corporation voluntarily agrees to the issuance of this Order.

Date: 23 April 2019 By: Nick Yawer, Director
(Person) (Title)
Forza Automotive Group Corporation

Commonwealth of Virginia
City/County of Stafford

The foregoing document was signed and acknowledged before me this 23rd day of
April, 2019, by Nick F Yawer who is
Director of Forza Automotive Group Corporation, on behalf of the
corporation.

[Signature]
Notary Public

7667334
Registration No.

My commission expires: 11/30/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 30 days of the execution of this Order, Forza Automotive Group Corporation shall:
 - a. Submit to DEQ an action plan, by which Forza Automotive Group Corporation shall abide per Section E(12) of this Order, to remove or permanently close the three UST's at the Property in accordance with 9VAC25-580-320. The completion timeframe of such a plan shall be no later than 12 months after DEQ approval.
 - b. Maintain UST closure records in accordance with 9VAC25-580-350.

2. **DEQ Contact**

Unless otherwise specified in this Order, Forza Automotive Group Corporation shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193